



# MISSOURI DEPARTMENT OF MENTAL HEALTH

DORN SCHUFFMAN, DEPARTMENT DIRECTOR



DEPARTMENT  
OPERATING  
REGULATION  
NUMBER

DOR  
2.210

CHAPTER Clients Rights	SUBCHAPTER Investigation Procedures	EFFECTIVE DATE Dec. 30, 2003	NUMBER OF PAGES 7	PAGE NUMBER 1 of 7
SUBJECT Abuse and Neglect Definitions and Procedures; Community Provider Facilities		AUTHORITY Sections 630.050		HISTORY Revises DOR 2.210 Effective 7/1/96
PERSON RESPONSIBLE Deputy Director, Quality Management			Sunset Date July 1, 2007	

**Purpose:** Prescribes procedures for reporting, investigating and processing complaints of abuse, neglect and misuse of funds/property of Department of Mental Health (department) consumers in a residential facility, day program or specialized service that is licensed, certified or funded by the department.

**Application:** Applies to department employees.

(1) As used in this DOR, the following terms shall mean:

(A) "Class I neglect," failure of an employee to provide reasonable or necessary services to maintain the physical and mental health of any consumer when that failure presents either imminent danger to the health, safety or welfare of a consumer, or a substantial probability that death or physical injury would result.

(B) "Class II neglect," failure of an employee to provide reasonable or necessary services to a consumer according to the individualized treatment or habilitation plan, if feasible, or according to acceptable standards of care. This includes action or behavior which may cause psychological harm to a consumer due to intimidating, causing fear or otherwise creating undue anxiety.

(C) "Complaint," allegation that class I neglect, class II neglect, misuse of funds/property, physical abuse, sexual abuse, or verbal abuse has occurred.

(D) "Consumer," individual receiving services from any program or facility contracted, licensed, certified or funded by the department. Otherwise referred to as client, resident or patient.

(E) "Incident and Investigation Tracking System (iiTS)," an automated database operated by the department to collect and analyze data related to events that have actual or potential adverse outcomes for consumers in order to track department follow-up and quality improvement activities. An iiTS manual is available as a resource that provides detail regarding abuse and neglect procedures, data input, forms and sample products for use.

(F) "Misuse of funds/property," the misappropriation or conversion of a consumer's funds or property by an employee for another person's benefit.

(G) "Physical abuse,"

1. An employee purposefully beating, striking, wounding or injuring any consumer; or

2. In any manner whatsoever, an employee mistreating or maltreating a consumer in a brutal or inhumane manner. Physical abuse includes handling a consumer with any more force than is reasonable for a consumer's proper control, treatment or management.



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(H) "Sexual abuse," any touching, directly or through clothing, of a consumer by an employee for sexual purpose or in a sexual manner. This includes but is not limited to:

1. Kissing;
2. Touching of the genitals, buttocks or breasts;
3. Causing a consumer to touch the employee for sexual purposes;
4. Promoting or observing for sexual purpose any activity or performance involving consumers including any play, motion picture, photography, dance, or other visual or written representation;
5. Failing to intervene or attempt to stop or prevent inappropriate sexual activity or performance between consumers.

(I) "Verbal abuse," an employee using profanity or speaking in a demeaning, non-therapeutic, undignified, threatening or derogatory manner to a consumer.

(2) Complaints received under 9 CSR 10-5.200 shall be recorded on department Form 9719 Incident and Investigation Tracking System (iiTS) - Incident Report. Department employees shall immediately report any complaints they receive or make a complaint themselves if they have reasonable cause to suspect abuse, neglect or misuse of funds property; this complaint shall be given to the regional center director or regional administrator. Employees who fail to report incidents or suspected incidents of abuse, neglect or misuse of funds/property are subject to disciplinary action, criminal prosecution or both.

(A) All complaints shall be entered into the iiTS database within 24 hours or by the end of the next working day after the incident occurred, was discovered or the notification was received.

(B) The regional center director or regional administrator is responsible for investigation and processing of these complaints by following procedures addressed in statute, regulations and the iiTS manual. Guidance may be sought from the Office of the Attorney General or department legal counsel. The department will ensure that any changes in these references will be distributed. Directions and information regarding the procedures in the iiTS manual include:

1. Incident reporting;
2. Investigation process;
3. Flowcharts;
4. Final determination forms; and
5. Sample determination letters.

(3) The regional administrator's office, regional center director's office or other department designee shall ensure the head of the facility, day program or specialized service has carried out 9 CSR 10-5.200 (2)(C) and (3)(A) and (B).

(4) Upon receiving a complaint the regional administrator's office, regional center director's office or other department designee shall take the following actions.



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(A) Take necessary action to protect the safety or welfare of department consumers, which may include removing department consumers from the facility. The head of the department supervising facility shall consult with the office of the Attorney General prior to removal unless such prior consultation would endanger the welfare or safety of the consumers. If prior consultation is not possible, the office of the Attorney General shall be informed of the removal as soon as possible.

(B) Within five (5) working days after receiving the complaint, acknowledge by letter the receipt of the complaint, if the person who filed the complaint is identified. The letter shall also state that an investigation has been initiated, if the investigation has been initiated.

(C) Initiate an investigation as follows.

1. Investigations of all complaints of class I neglect, physical abuse or sexual abuse shall be initiated immediately.

2. Investigations of class II neglect, misuse of funds/property or verbal abuse shall be initiated within twenty-four (24) hours.

3. Investigations may include, but not be limited to, obtaining signed written statements or tape recorded interviews from all persons with information regarding the complaint including witnesses, victims or alleged perpetrators and must include appropriate supporting documents.

4. The investigative report shall be completed within thirty (30) working days of the filing of the complaint. The standardized report format adopted by the department shall be used.

a. A preliminary report shall be completed if the investigative report cannot be completed within thirty (30) working days due to conditions beyond control of the investigative body (e.g. awaiting outside records such as an autopsy report).

b. The preliminary report will contain the current findings, reason(s) for delay, and the expected completion date of the investigative report.

(5) The head of the regional administrator's office, regional center director's office or other department designee shall:

(A) Cause to have a physical examination of any consumer completed as soon as possible if there is suspected sexual abuse or if there are any injuries related to suspected abuse or neglect. The examination shall be performed by a licensed physician, or registered nurse if a physician is not available, and a copy of the examination regarding the injury and treatment shall be placed in the consumer's record. The examination will take place with consent of the consumer, or with consent of their guardian if they have a guardian. Immediate examination without consent may be necessary when there is reason to believe that a serious or life threatening injury has occurred.

(B) Immediately report to the local law enforcement official any alleged or suspected:

1. Sexual abuse, or;



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2. Abuse, neglect or misuse of funds/property if the regional administrator, regional center director or other department designee has cause to believe that the act(s) may result in a criminal charge, or;

3. Abuse or neglect which results in physical injury.

(6) After receiving the final investigative report, the regional administrator's office, regional center director's office or other department designee shall within ten (10) working days, do one of the following:

(A) Decide upon appropriate disposition of the matter.

(B) Request further investigation in which case an additional ten (10) working days may be allowed to complete the investigation unless the regional administrator's office, regional center director's office or other department designee allows for a longer period of time.

(7) After receiving the final investigative report, within ten (10) working days the regional administrator's office, regional center director's office or other department designee shall send to the alleged perpetrator by regular and certified mail a summary of the complaint and findings if there is a substantiated charge; the provider shall be copied. The summary shall comply with the constraints regarding confidentiality contained in section 630.167 RSMo. If the finding is unsubstantiated, a letter shall be sent to the provider and this decision shall be entered into iITS within one (1) working day of the decision.

(8) If the regional administrator's office, regional center director's office or other department designee has made a preliminary finding of abuse, neglect or misuse of funds/property.

(A) The alleged perpetrator may request to meet with the regional administrator's office, regional center director's office or other department designee and submit comments or present evidence; the provider may be present to support the alleged perpetrator.

1. This meeting must be requested within ten (10) working days of receiving the summary.

2. The meeting must take place within ten (10) working days of the alleged perpetrator's request to meet unless the parties mutually agree on an extension.

(B) Within ten (10) working days of the meeting, or if no request for a meeting is received within ten (10) working days of the alleged perpetrator's receipt of the summary, the regional administrator's office, regional center director's office or other department designee shall make a final determination (substantiated or unsubstantiated).

1. The alleged perpetrator shall be notified of this decision by regular and certified mail; the provider shall be copied.

2. The department hearings administrator or designee must be copied on all letters substantiating a charge.



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(C) If the complaint is substantiated, the notification letter shall advise the perpetrator that they have ten (10) working days following receipt of the letter to contact the department hearings administrator or designee to appeal the decision. This letter shall contain information to the employee regarding:

1. Any appeal rights;
2. A summary of the action of the employee resulting in the determination;
3. A definition of the charge from section (1); and
4. Information listing the specific substantiated charges which disqualify an individual from employment as specified in (10) (A) and (B).

(D) The regional administrator's office, regional center director's office or other department designee shall enter the final determination into iITS whether the complaint is substantiated or not within one (1) working day of the final determination decision. If the complaint is substantiated, a final determination form (MO#650-8808) shall be submitted to Central Office in accordance with the iITS procedures within five (5) working days of the final determination decision. A copy of the letters (referenced in (7) and (8)(C)) sent to the employee shall be attached to the final determination form.

(E) The regional administrator's office, regional center director's office or other designee's effort to notify the alleged perpetrator at his/her last known address by regular and certified mail shall serve as proper notice. The alleged perpetrator's refusal to receive certified mail does not limit the department's ability to make a final determination.

(F) If there is no appeal, the decision of the regional administrator's office, regional center director's office or other department designee is final. The Office of Human Resources shall add the perpetrator's name to the department's Disqualification Registry pursuant to section 630.170 RSMo for charges which comply with criteria in section 10 (A) and (B).

(9) If the department hearings administrator or designee is contacted for an appeal, he/she will notify the regional administrator's office, regional center director's office or other department designee.

(A) The hearing will be scheduled to take place within thirty (30) working days of the request, but may delay for good cause. At the hearing the regional administrator's office, regional center director's office or other department designee shall present evidence to support its substantiated charge. The provider and/or perpetrator may submit comments or present evidence to show why the decision of the regional administrator's office, regional center director's office or other department designee should be modified or overruled.

(B) The hearings administrator or designee may obtain additional information from department employees.

(C) The perpetrator and regional administrator's office, regional center director's office or other department designee shall be notified by certified mail of the hearings administrator's or designee's decision within fourteen (14) working days of the appeal hearing; the provider shall be copied.



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(D) If the charge is upheld by the hearings administrator's or designee's decision, and complies with criteria in subsections (10) (A) and (B) of this DOR, the Office of Human Resources shall place the perpetrator's name on the department Disqualification Registry pursuant to section 630.170 RSMo.

(10) If the department substantiates that a person has perpetrated:

(A) Class I neglect, misuse of funds/property, physical abuse or sexual abuse, the perpetrator shall not be employed by the department, nor be licensed, employed or provide services by contract or agreement at a residential facility, day program or specialized service that is licensed, certified or funded by the department; or

(B) Two (2) counts of verbal abuse, or two (2) counts of class II neglect, or one (1) count of verbal abuse and one (1) count of class II neglect, within a twelve (12) month period, the perpetrator shall not be employed by the department, nor be licensed, employed or provide services by contract or agreement at a residential facility, day program or specialized service that is licensed, certified or funded by the department.

(11) After the investigation is completed, and after the effective date of any disciplinary action, the regional administrator's office, regional center director's office or other department designee shall notify: the parent(s) of a minor consumer; a consumer's legal guardian(s); or a consumer who is their own guardian of the findings of the investigation, a summary of the facts and circumstances and actions taken, except that the names of any employees or other consumers shall not be revealed.

(12) All plans of action or disposition shall be entered into iiTS within ten (10) working days of the determination.

(13) The complaint and all investigative reports shall be confidential and shall be retained by the regional administrator's office, regional center director's office or other department designee, except as otherwise provided for in this DOR or by statute. No copy of the complaint or any report (verbal or written) made in response to the complaint may be released except by the head of the regional administrator's office, regional center director's office or other department designee.

(A) The parents or other guardian of the consumer who is the subject of such report may submit a written request to the department's General Counsel to obtain a copy of the investigative report.

(B) Requests for release of the investigative report not applicable to section (A) shall be directed to the office of the Attorney General or the department's office of General Counsel for their review and advice.

(C) The investigative report shall be admissible in any judicial proceeding or hearing in accordance with section 36.390 RSMo, or any administrative hearing before the director of the department or director's designee.

(D) The investigative report shall not be placed in the consumer record.



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(14) State operated facility employees shall cooperate fully with law enforcement, other department employees or employees from other agencies authorized to investigate a complaint. Failure to cooperate may result in dismissal of the employee.

(15) State operated facility employees shall forfeit their positions as set out in section 36.410 RSMo if they willfully refuse or fail to appear, or having appeared shall refuse to testify or answer questions before the board, investigator or the head of the facility during the investigation.

(16) No director, supervisor or employee of a residential facility, day program or specialized service shall evict, harass, dismiss or retaliate against a patient, resident, consumer, or employee because he or she or any member of his or her family has made a report of any violation or suspected violation of consumer abuse or neglect. Penalties for retaliation may be imposed up to and including cancellation of agency contracts and/or placement of individual on the DMH Employee Disqualification Registry.

(17) In March of each even numbered year, the iITS core team shall seek review of this DOR to ensure the processes are followed. Findings and results of the review shall be submitted to the Deputy Director, Office of Quality Management. Recommendations shall be a part of the review.

(18) In March of each even numbered year, the Investigations Program Director shall ensure a report is completed of analysis and trends of the abuse and neglect process and outcomes. The report shall be submitted to the Deputy Director, Office of Quality Management.

(19) Persons who are responsible for implementing this DOR, or for assuring it's implementation, and fail to do so may be subject to disciplinary action.

*HISTORY: Original DOR effective May 1, 1983. Amendment effective May 1, 1984. Amendment effective July 1, 1996. Amendment effective July 1, 2002. Amendment effective December 30, 2003.*

## References:

1. Sections 36.390; 630.167, 630.168, 630.170 RSMo.
2. 9 CSR 10-5.200